

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

DIEGO A.

Claimant

vs.

NORTH BAY REGIONAL CENTER

Service Agency.

OAH No. N 2006080127

**DECISION**

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings, heard this matter on September 15, 2006, in Santa Rosa, California.

Kristen Casey, Attorney at Law, represented the service agency North Bay Regional Center (NBRC).

Claimant Diego A. was represented by Vicki Thomas Hughes, Advocate, and his mother Betty L.

The matter was submitted on September 15, 2006.

**ISSUE**

Whether NBRC is required to provide funding for retention of an attorney to represent claimant in proceedings to obtain services from Windsor Unified School District.

**FACTUAL FINDINGS**

1. Diego A. (claimant) is a seven-year-old boy born August 26, 1999. He lives with his mother, father and older brother in Windsor, California. Claimant is eligible for and receives services from NBRC based on a diagnosis of autism.

2. Claimant currently attends Windsor Creek Elementary School, in the Windsor Unified School District. He is a full inclusion student and has an assistant. Claimant's parents have not always been satisfied with the educational services provided by the school district. In

early 2005 claimant's parents retained Debra Wright, Esq. to negotiate an agreement with the school district regarding services to be provided to claimant. The school district allegedly breached the agreement in December 2005 by "continuing to fail to provide claimant a free and appropriate public education."

3. On July 24, 2006, an interdisciplinary (ID) team meeting was held with claimant's mother, claimant's advocate, Vicki Hughes, and Suzette Soviero, a NBRC case management supervisor, to discuss unresolved problems regarding claimant's school program for both summer and fall of 2006. At the meeting claimant's mother and his advocate advised Soviero that the mother had been working with attorney Wright for the past 18-24 months and had retained Wright to handle the dispute with the school district. Claimant's mother requested that NBRC pay her attorneys fees.

4. On July 25, 2006, a Notice of Proposed Action was sent to claimant's mother denying her request that NBRC pay her attorney fees. The Notice stated in pertinent part:

... Funding for services must be based on needs identified at the ID Team meeting and a determination that no generic agency is responsible for meeting those needs.

NBRC must be the payer of last resort. NBR has notified Claimant of generic advocacy assistance such as the Area Board and Protection and Advocacy.

This would not be an appropriate nor cost effective use of public funds.

5. Claimant maintains NBRC is required to by law to help pay legal fees incurred by claimant to obtain a free and appropriate education from the school district. Claimant primarily relies on Welfare and Institutions Code<sup>1</sup> sections 4648, subdivisions (b)(1) and (b)(2), and 4640.6, subdivision (g)(2), in support of his position. Section 4648, (b)(1) establishes advocacy for, and protection of, the civil, legal, and service rights of persons with developmental disabilities. Subdivision (b)(2) provides:

Whenever the advocacy efforts of a regional center to secure or protect the civil, legal, or service rights of any of its consumers prove ineffective, the regional center or the person with developmental disabilities or his or her parents, legal guardian, or other representative may request the area board to initiate action under the provisions defining area board advocacy functions established in this division.

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<sup>1</sup> All citations are to the Welfare and Institutions Code unless otherwise indicated.

Section 4640.6, subdivision (g)(2) provides:

Contracts between the department [of Developmental Services] and regional center shall require the regional center to have, or contract for, all of the following areas. . . .

(2) Special education expertise to assist the regional center in providing advocacy and support to families seeking appropriate educational services from a school district.

Claimant argues that pursuant to the above provisions a regional center has an obligation to advocate to secure or protect the civil, legal, or service rights of its consumers in proceedings with other public entities, such as the school district. Claimant further argues that when a regional center's advocacy proves ineffective, pursuant to section 4640.6, subdivision (g)(2), the regional center is required to contract for the necessary special education expertise to assist the regional center in its advocacy efforts, which would include contracting for legal expertise in the area of special education. Claimant then goes on to argue that pursuant to section 4648, subdivision (6), claimant or his representative is entitled to make personal choices about his care, including the choice of providers for required services, in this case, legal services. Therefore, according to claimant, he is entitled to have NBRC pay for an attorney to represent him in proceedings to obtain services from the school district. Specifically, claimant requests that NBRC be required to prospectively fund 40 hours of legal representation by attorney Debra Wright.

6. NBRC takes the position that it is not required to fund an attorney to represent claimant in proceedings against the school district because legal services were never a support that was identified in claimant's individualized program plan (IPP), and because there are generic resources available to provide legal advocacy assistance, e.g., Clients Rights Advocates, Protection and Advocacy and Area 4 Board. The Regional Center notes that it is required to make cost-effective use of public funds (§ 4646, subd. (a)), and that paying for a service another public agency has an obligation to provide is not cost effective.

NBRC also relies on Procedure Memo 2301, which sets forth NBRC's purchase of service guidelines. Section I (E) of Procedure Memo 2301 requires NBRC to "use the least costly item or service that meets the need of the client and reflects the cost-effective use of public resources." Section II (A) of Procedure Memo 2301 requires cost effective use of public resources and provides NBRC will not pay for services that are covered by another source, in this case the Area Board or Protection and Advocacy.

NBRC additionally notes that it has not had any contact with the school district for approximately 12 to 18 months because claimant's parents have requested that NBRC not attend claimant's individualized education program (IEP) meetings. NBRC indicates that it is willing to advocate on behalf of claimant at IEP meetings, but when the request for advocacy becomes a request for personal legal representation, it is NBRC policy to refer the consumer to a generic resource such as Protection and Advocacy or the Area Board. NBRC will contact

Protection and Advocacy or the Area Board on the consumer's behalf if requested to do so by the consumer or the consumer's representative.

## LEGAL CONCLUSIONS

1. Under the Lanterman Developmental Disabilities Service Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.), the State of California accepts responsibility for persons with developmental disabilities (§ 4501) and pays for the majority of their "treatment and habilitation services and supports" in order to enable such persons to live in the least restrictive environment possible (§ 4502, subd. (a)). The State agency charged with implementing the Lanterman Act is the Department of Developmental Services (DDS). The Lanterman Act authorizes DDS to contract with regional centers to provide developmentally disabled individuals with access to the services and supports best suited to them throughout their lifetime. (§ 4620.)

2. In order to determine how an individual client is to be served, regional centers are directed to conduct a planning process that results in an individual program plan (IPP) designed to promote as normal a life as possible. (§ 4646; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389.) The IPP is developed by an interdisciplinary team and must include participation by the client and/or his or her representative. The ID team must determine which services and supports are necessary for the consumer and must reflect those needs in the IPP. (§ 4512, subd. (b).) Among other things, the IPP must set forth goals and objectives for the client, contain provisions for the acquisition of services (which must be provided based upon the client's developmental needs), and reflect the client's particular desires and preferences. (§ 4646; § 4646.5, subds. (a)(1), (a)(2) & (a)(4); § 4512, subd. (b); § 4648, subd. (a)(6)(E).) Services and supports available to persons with developmental disabilities include advocacy assistance, including self-advocacy training, facilitation and peer advocates. (§ 4512, subd. (b).) Regional centers are also directed to give very high priority to development and expansion of services designed to assist families caring for developmentally disabled children at home. Assistance is defined to include advocacy to assist persons in securing educational services and other benefits to which they are entitled. (§ 4685, subd. (c)(1).)

3. Although an IPP must reflect the needs and preferences of the consumer (§ 4512, subd. (b)), a regional center is not mandated to provide all the services a consumer may require. A regional center's provision of services to consumers and their families must "reflect the cost-effective use of public resources." (§ 4646, subd. (a).) A regional center also has discretion in determining which services it should purchase to best accomplish all or any part of a consumer's IPP. (§ 4648.) This entails a review of a consumer's needs, progress and circumstances, as well as consideration of a regional center's service policies, resources and professional judgment as to how the IPP can best be implemented. (§§ 4646, 4648, 4624, 4630, subd. (b) & 4651; and see *Williams v. Macomber* (1990) 226 Cal.App.3d 225, 233.)

4. Claimant contends NBRC's duty to advocate for consumers includes the duty to provide legal representation by a private attorney in proceedings against a school district when the regional center's advocacy efforts are ineffective. Claimant's contention is not persuasive.

Section 4648, subdivision (b), cited by claimant, expressly provides that when a regional center's advocacy proves ineffective, the regional center, claimant or claimant's representative may request the area board to initiate action. Section 4548, subdivision (d)(1) states that an area board shall have the authority to pursue legal, administrative and other appropriate remedies to ensure the protection of the legal, civil, and service rights of consumers in its area. A generic resource therefore exists to address claimant's legal needs, and claimant's parents were advised of the existence of this resource. Because a generic resource is available to provide legal assistance in proceedings against the school district, it would not be a cost effective use of public resources for NBRC to fund private legal services for claimant. Therefore, NBRC is not required to fund an attorney to represent claimant in such proceedings.

Section 4640.6, subdivision (g)(2) does not support claimant's position either. Section 4640.6, subdivision (g)(2) applies to contracts between a regional center and the State Department of Developmental Services. Nothing in that section imposes any obligation on the regional center to provide advocacy to a consumer in the form of personal or private legal representation.

It is also worth noting that claimant's definition of advocacy would greatly expand the common meaning of that term, which is simply to support or argue in favor of a cause. Claimant has cited nothing in the Lanterman Act that would support such an expansion. Lastly, it is worth noting that NBRC is willing to advocate on claimant's behalf in proceedings with the school district but is currently precluded from doing so because claimant's parents have requested that NBRC not attend IEP meetings. It would be inequitable to require NBRC to provide funding for a process in which it cannot participate. Accordingly, it is found that claimant has failed to establish that the Lanterman Act imposes a duty upon a NBRC to fund retention of an attorney to represent claimant in proceedings against the school district.

### **ORDER**

Claimant's request that NBRC be required to provide funding for retention of an attorney to represent in him proceedings against Windsor Unified School District is denied.

DATED: September 27, 2006

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CHERYL R. TOMPKIN  
Administrative Law Judge  
Office of Administrative Hearings

### **NOTICE**

This is a final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety (90) days.